

1 Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
2 1871 The Alameda, Suite 425
San Jose, CA 95126
3 Telephone: (408) 429-6506
4 Fax: (408) 369-0752
pgore@prattattorneys.com

5 Keith M. Fleischman (admitted *pro hac vice*)
6 Bradley F. Silverman (admitted *pro hac vice*)
THE FLEISCHMAN LAW FIRM, PLLC
7 565 Fifth Avenue, Seventh Floor
New York, New York 10017
8 Telephone: (212) 880-9571
9 Fax: (917) 591-5245
keith@fleischmanlawfirm.com
10 bsilverman@fleischmanlawfirm.com

11 *Attorneys for Plaintiffs*

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 ALEX ANG and LYNNE STREIT,
17 individually and on behalf of all others
18 similarly situated,

Plaintiffs,

19 v.

20 BIMBO BAKERIES USA, INC.,

21 Defendant.
22
23
24
25
26
27
28

Case No. 13 Civ. 1196 (WHO)

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO DEFENDANT**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, as supplemented by the Local Rules of the United States District Court for the Northern District of California, plaintiffs, through their undersigned attorneys, hereby demand that, within thirty (30) days, serve answers under oath to the interrogatories set forth herein (the "Interrogatories") at the offices of the Fleischman Law Firm, PLLC, located at 565 Fifth Avenue, 7th Floor, New York, New York 10017.

I. DEFINITIONS

A. As used herein, the term, "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

B. As used herein, the term "person" is defined as any natural person or any business, legal, governmental, or other type of entity or association.

C. Unless otherwise indicated, all references herein to any person or entity shall be defined to specifically include, where applicable, all of that person or entity's current and former employees, officers, directors, principals, owners, agents, representatives, accountants, attorneys, subsidiaries, parent entities, predecessors, and successors.

D. As used herein, the terms "communication" and "communications" are defined as the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

E. When referring to a person, as used herein, the term "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

F. When referring to documents, as used herein, the term "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

G. As used herein, the term "Third Party" or "Third Parties" shall refer to any natural person or any business, legal, governmental, or other type of entity or association, other than the parties named in the above-captioned action.

1 H. As used herein, the terms "relate to," "related to," "relating to," "refer to," "referring
2 to," "referred to," and "regarding" shall each mean relating to, referring to, regarding, reflecting,
3 describing, evidencing, constituting, having a relationship to, pertaining to, identifying, containing,
4 pertinent to, comprising, setting forth, showing, disclosing, explaining, summarizing, or to be
5 otherwise factually, legally, or logically connected to the subject matter of the particular request,
6 whether directly or indirectly, and whether in whole or in part.

7 I. As used herein, the terms "all" and "each" shall be construed as all and each.

8 J. As used herein, the connectives "and" and "or" shall be construed either
9 disjunctively or conjunctively as necessary to bring within the scope of the discovery request all
10 responses that might otherwise be construed to be outside of its scope.

11 K. As used herein, the use of the singular form of any word includes the plural and *vice*
12 *versa*.

13 L. As used herein, the masculine includes the feminine and neuter; the feminine
14 includes the masculine and neuter, and the neuter includes the masculine and feminine.

15 M. As used herein, the term "including" shall be construed to mean "including, but not
16 limited to."

17 N. As used herein, the term "Plaintiffs" shall mean plaintiffs Alex Ang and Lynne
18 Streit.

19 O. As used herein, the term "Bimbo" shall mean defendant Bimbo Bakeries USA, Inc.,
20 together with its parent, subsidiary, related, and affiliated entities, and all current and former
21 officers, employees, directors, principals, owners, agents, independent contractors, representatives,
22 accountants, predecessors, and successors of Bimbo Bakeries USA, Inc. and its parent, subsidiary,
23 related, and affiliated entities.

24 P. As used herein, the term "SAC" shall mean the second amended complaint filed in
25 the above-captioned action.

26 Q. As used herein, the term "Purchased Products" shall mean Sara Lee Classic 100%
27 Whole Wheat Bread, Sara Lee Soft & Smooth Whole Wheat White Bread, Sara Lee 100% Whole
28 Wheat Bread, Entenmann's Soft'ees, Bimbo Original Toasted Bread, and Thomas' Plain Bagel

1 Thins.

2 R. As used herein, the term "Substantially Similar Products" shall mean all products
3 identified in paragraphs 194, 198, 203, 215 and 226 of the SAC.

4 S. As used herein, the term "Heart Check Mark" shall mean the American Heart
5 Association Heart Check Mark.

6 T. As used herein, the term "FDCA" shall mean the Food, Drug, and Cosmetic Act.

7 U. As used herein, the term "FDA" shall mean the Food and Drug Administration.

8 V. As used herein, the term "Class Period" shall have the same meaning ascribed to it in
9 the SAC.

10 **II. INSTRUCTIONS**

11 1. These Interrogatories are to be answered by you based on all information that is or
12 may be available to you, or any person, employee, agent, expert, accountant or attorney who has
13 acted or is now acting for you or on your behalf.

14 2. Responses should not be limited to your personal knowledge. If you cannot answer
15 any interrogatory in full after exercising due diligence to secure the information sought, so state and
16 answer to the extent possible, specifying the reason(s) for your inability to respond to the remainder,
17 and providing whatever information or knowledge that you have concerning the portions not
18 answered, including any facts upon which such knowledge or belief is based.

19 3. When an interrogatory does not specifically request a particular fact, but such fact is
20 necessary to make the answer to the interrogatory either comprehensible, complete, or not
21 misleading, you should include that fact as part of the answer. The Interrogatories shall be deemed
22 to specifically request whatever fact or facts are needed to make the response comprehensible,
23 complete, or not misleading without reference to any other matter.

24 4. To the extent any interrogatory is not answered, in whole or in part, based upon a
25 claim of privilege, identify the nature of any privilege (including work product) that is being claimed
26 and, should the privilege be governed by state law or a foreign jurisdiction, indicate the privilege
27 rule of the relevant state or jurisdiction being invoked.
28

1 5. These Interrogatories are continuing in nature, and you are shall provide all additional
2 information responsive to the Interrogatories when such information becomes known to or available
3 to you. Should you determine that any given answer to these Interrogatories is inaccurate in any
4 way, immediately disclose how and why such answer is inaccurate, and provide all available
5 information needed to provide a complete, full, and accurate answer.
6

7 **III. INTERROGATORIES**

8 1. Identify all officers, employees, independent contractors, and agents of Bimbo who
9 have been responsible for compliance with labelling requirements of the FDCA, FDA, and Sherman
10 Law over the past ten years, including the titles or job descriptions of all such persons. To the extent
11 any such persons are not presently employed by Bimbo, provide the most recent information
12 regarding their whereabouts, including current addresses and phone numbers.

13 2. Identify all officers, employees, independent contractors, and agents of Bimbo who
14 have been responsible for the text appearing on food labelling or packaging over the past ten years,
15 including the titles or job descriptions of all such persons. To the extent any such persons are not
16 presently employed by Bimbo, provide the most recent information regarding their whereabouts,
17 including current addresses and phone numbers.

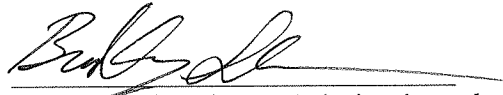
18 3. Identify all outside marketing, advertising, or promoting consultants, agencies,
19 experts, or professionals that provided services to Bimbo within the past ten years relating to the
20 marketing, advertising, promoting, labelling, or packaging of food products, including a description
21 of the type of services provided and the most recent information regarding whereabouts, including
22 current addresses and phone numbers.

23 4. Identify all changes or variations in the labelling or packaging of the Purchased
24 Products and Substantially Similar Products over the past six years, and specify where a change or
25 variation was only made regionally or on less than all labelling or packaging of a product, including
26 the identification of the region or individual product sub-group at issue.

27 5. Identify the manufacturer of each of the Purchased Products and Substantially Similar
28 Products, including the manufacturer's relationship to Bimbo Bakeries USA Inc.

1 6. Identify the party responsible for the initial sale of each of the Purchased Products
2 and Substantially Similar Products after they are manufactured, including that party's relationship to
3 Bimbo Bakeries USA Inc.

4
5 Dated: January 24, 2013

6
7 
8 Keith M. Fleischman (admitted *pro hac vice*)
9 Bradley F. Silverman (admitted *pro hac vice*)
10 THE FLEISCHMAN LAW FIRM, PLLC
11 565 Fifth Avenue, Seventh Floor
12 New York, New York 10017
13 Telephone: (212) 880-9571
14 Fax: (917) 591-5245
15 keith@fleischmanlawfirm.com
16 bsilverman@fleischmanlawfirm.com

17 Ben F. Pierce Gore (SBN 128515)
18 PRATT & ASSOCIATES
19 1871 The Alameda, Suite 425
20 San Jose, CA 95126
21 Telephone: (408) 429-6506
22 Fax: (408) 369-0752
23 pgore@prattattorneys.com

24 *Attorneys for Plaintiffs*
25
26
27
28